

1748. July 14. M'VICAR *against* COCHRAN and KER.

No. 97.

A superior cannot pursue both for payment of by-gone feu-duties, and a declarator of irritancy *ob non solutum canonem*, but must be content with the one or the other.

Fol. Dic. v. 4. p. 316. Kilkerran, No. 7. p. 531.

* * D. Falconer's report of this case is No. 9. p. 4180. *voce* FEU.

SECT. XXIII.

Act anent Annexations of Crown Property.—Grant from the Crown of the Casualties on the Estates of its Vassals.

1665. February 22. MARQUIS of HUNTLY *against* GORDON of LESMORE.

No. 98.

In a process at the Marquis of Huntly's instance, as donatar to the forefaulture of the Marquis of Argyle *against* the Laird of Lessmore, for removing from certain lands disposed to him by Argyle, and which lands were old wadsets of the Marquis of Huntly's estate; the Lords decerned in the removing *against* Lessmore, because the wadsets were not confirmed by the King before Argyle's forefaulture.

Newbyth MS. p. 27.

* * Stair reports this case:

The Marquis of Huntly, as donatar to the forefaulture of the Marquis of Argyle, as to the estate of Huntly, obtained decret of Parliament *against* Gordon of Lesmore, for payment of the mails and duties of certain lands, and for removing therefrom. He suspends, on these reasons, *1st*, That the decret was null, not proceeding upon lawful citation, but far fewer days than are appointed by law, and that he was absent, and now alleges, that his right to the lands in question was by excambion with the Marquis of Argyle, for lands holden of the Marquis of Huntly, which he had possessed thirty or forty years before, and therefore, if the pursuer were dispossessed of the lands in question, he behoved to possess him in other lands; *2dly*, The decret is null, as not proceeding upon trial of an inquest, cognoscing the Marquis of Argyle heritable possessor five years before, conform to the act of Parliament; nor could that be cognosced, because the defender himself was heritable possessor these years; *3dly*, The defender's right from the